

The Retailers' Occupation Tax does not apply to the gross receipts from a sale in which the seller is obligated, under the terms of an agreement with the purchaser, to make delivery of the property from a point in this State to a point outside this State, not to be returned to this State, provided that such delivery is actually made. See 86 Ill. Adm. Code 130.605(b). (This is a GIL).

March 25, 1999

Dear Xxxxxx:

This letter is in response to your letter dated February 23, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I am writing to request a copy of the legal ruling regarding the sale of merchandise which is to be shipped out of state. There has been some confusion from our customers as to whether or not they are responsible for paying Illinois retail taxes if they purchase items in our store (in CITY, Illinois) and ask us to ship the merchandise to another state. Our understanding of the law is that they are required to pay sales tax if they are physically in our store at the time of purchase.

We would greatly appreciate a written copy of the rules regarding when it is required to collect sales tax (or not required to collect tax).

Thank you for your help with this matter. We appreciate your efforts to clarify this for us.

The Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq., imposes a tax upon persons engaged in the business of selling tangible personal property at retail. The Use Tax Act, 35 ILCS 105/1 et seq., imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. As such, Illinois retailers are liable for Retailers' Occupation Tax on gross receipts of sales and must collect the corresponding Use Tax incurred by purchasers at the time of sale.

When tangible personal property is located in this State at the time of its sale (or is subsequently produced in this State) and then is delivered in this State to the purchaser, the gross receipts from the sale are subject to tax if

the sale is at retail. However, Retailers' Occupation Tax liability does not apply to the gross receipts from a sale in which the seller is obligated, under the terms of an agreement with the purchaser, to make delivery of the property from a point in this State to a point outside this State, not to be returned to this State, provided that such delivery is actually made. See 86 Ill. Adm. Code 130.605(b), enclosed. If a sales agreement requires the tangible personal property being sold to be returned to this State after delivery outside of this State, this exemption would not apply.

Please note that a sale is taxable even though a purchaser that receives physical possession of the property in this State, transports or sends the property out of this State for use outside the State or for use in the conduct of interstate commerce. See part (2) of subsection (a) of Section 130.605.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.